

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORD BECKWITH,

Plaintiff,

v.

DECISION AND ORDER
04-CV-21

ERIE COUNTY WATER AUTHORITY,
HELEN CULLINAN SZVOREN,
EDWARD J. KASPRZAK,
ROBERT A. MENDEZ,

Defendants.

This case was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1), on January 23, 2004. On February 27, 2004, plaintiff filed a motion for summary judgment. On September 3, 2004, defendants filed a motion to dismiss the Amended Complaint, and on November 12, 2004, defendants filed a cross-motion for summary judgment.

On September 30, 2005, Magistrate Judge Foschio filed a Report and Recommendation, recommending that: (1) defendants' motion to dismiss plaintiff's claims brought under 28 U.S.C. § 1983 (second and third causes of action) should be granted; and (2) plaintiff's claim brought under Article 78 of the C.P.L.R. (first cause of action) should be remanded to state court. The

Magistrate Judge also recommended that the motions for summary judgment relating to the Article 78 claim should be denied without prejudice.

On October 14, 2005, defendants filed objections to the Report and Recommendation, and plaintiff filed a response. Plaintiff did not file any objections to the Magistrate Judge's recommendation to dismiss his § 1983 claims.

The parties appeared for oral argument on the objections on January 11, 2006. However, at that time, the defendants presented the Court with additional cases that were not cited in their objections. Accordingly, the Court requested supplemental briefing and an opportunity to review those cases. Defendants filed a supplemental brief on January 17, 2006, and on January 25, 2006, the plaintiff filed a supplemental response. Further oral argument was deemed unnecessary.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and supplemental submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Defendants object to the Magistrate Judge's recommendation to dismiss plaintiff's Article 78 claim for lack of federal jurisdiction. Defendants

argue that the Magistrate Judge erred in concluding that federal courts lack jurisdiction over Article 78 claims. Assuming *arguendo* that the Court does have jurisdiction over the plaintiff's Article 78 claim, the Court finds it appropriate to decline to supplemental jurisdiction over plaintiff's state law claim because all of his federal claims have been dismissed. See 28 U.S.C. § 1367(c)(stating that a district court may decline supplemental jurisdiction where the court has dismissed all of the claims over which it had original jurisdiction); see also Kelly v. City of Mount Vernon, 344 F. Supp.2d 395, 406 (S.D.N.Y. 2004); Camacho v. Brandon, 56 F. Supp. 2d 370, 380 (S.D.N.Y. 1999).

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants' motion to dismiss plaintiff's second and third causes of action is granted, and plaintiff's first cause of action brought under Article 78 is remanded to state court. The Clerk of Court is directed to take all steps necessary to close the case.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: February 8, 2006